

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
June 29, 2007 Session

**JAMES LESTER QUALLS v. RANDY CAMP, ET AL.**

**Appeal from the Chancery Court for Davidson County**  
**No. 03-2108-IV     Richard H. Dinkins, Chancellor**

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**No. M2005-02822-COA-R3-CV - Filed on July 23, 2007**

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In this action brought under the Administrative Procedures Act, an employee of the Department of Corrections filed a grievance challenging the discipline imposed upon him for an employment infraction as unwarranted and unduly severe. The Civil Service Commission, reviewing the Administrative Law Judge's decision, entered an order containing no findings of fact, conclusions of law, or policy reasons supporting its decision, and upon the employee's appeal to the Chancery Court, the Chancellor remanded the case to the Commission with instructions to enter an order in compliance with Tenn. Code Ann. § 4-5-314. The sole issue on appeal is whether the Chancery Court erred in awarding the employee an attorney's fee of \$14,920 pursuant to 42 U.S.C. § 1988. Finding no abuse of discretion, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and D. MICHAEL SWINEY, J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter, and Eugenie B. Whitesell, Senior Counsel, for the Appellants, Randy Camp, in his official capacity as Commissioner of Personnel and Executive Secretary of the Civil Service Commission, and Quentin White, in his official capacity as Commissioner of the Tennessee Department of Correction.

Larry D. Woods, Nashville, Tennessee, for the Appellee, James Lester Qualls.

**OPINION**

***I. Background***

This is the second time this case has been appealed. The pertinent factual and procedural background is provided by our opinion in the first appeal, *Qualls v. Camp*, No. M2004-01005-COA-

R3-CV, 2005 WL 2861585 (Tenn. Ct. App. M.S., Oct. 27, 2005) (“*Qualls I*”)<sup>1</sup>, and we quote from the *Qualls I* opinion in the following recitation of the relevant facts.

In August 2001, the Tennessee Department of Correction (“the Department”) disciplined Petitioner, Lt. James Lester Qualls (“Lt. Qualls”) for gross misconduct stemming from the alleged falsification of an official document relating to firearms qualifications. The Department demoted Lt. Qualls from lieutenant to correctional sergeant and transferred him from the Turney Center Industrial Prison in Only, Tennessee, where he had worked for twenty-seven years, to the Tennessee Prison for Women in Nashville, Tennessee. The Commissioner of Correction reviewed the matter and further demoted Lt. Qualls to the rank of correctional officer and transferred him to Wayne County Boot Camp in Clifton, Tennessee. *Qualls I*, 2005 WL 2861585, at \*1. Lt. Qualls filed a grievance challenging the discipline imposed upon him, arguing, among other things, that it was unwarranted and excessive.

In September 2002, the matter was heard by an administrative law judge (“ALJ”), who set aside the disciplinary measures. In its detailed order, the ALJ determined that (1) although Lt. Qualls had committed misconduct, the misconduct was not gross misconduct under Rule 1120-1-.01(45) of the Rules of the Department of Personnel; (2) the Department had failed to follow the civil service progressive discipline system as set forth in Tenn. Code Ann. § 8-3-330; (3) that the Department had failed to consider Lt. Qualls' past conduct and excellent work record and the extenuating circumstances surrounding the misconduct; and (4) that the Department did not follow the discipline imposed on another employee who had committed essentially the same offense. The Department appealed to the Civil Service Commission (“the Commission”), which heard the matter in June 2003. In a very brief order that contained no factual findings, conclusions of law, or policy reasons supporting its decision, the Commission overturned the decision of the ALJ and ordered Lt. Qualls be demoted from lieutenant to sergeant. *Id.*

Lt. Qualls filed an appeal of the Commission's determination in the Davidson County Chancery Court in July 2003. In his petition, Lt. Qualls asserted that the Commission's actions were arbitrary, capricious, abusive, and unsupported by material and substantial evidence. Lt. Qualls also asserted that the Department had failed to follow statutory requirements regarding progressive discipline. In his original petition to the chancery court, Lt. Qualls prayed for reinstatement, back pay, benefits, and reasonable attorney's fees pursuant to 42 U.S.C. §§ 1983, 1988, *et seq.* In October 2003, he amended his petition to include an assertion that the Commission had failed to comply with Tenn. Code Ann. §§ 4-5-314, 4-5-315, and 8-30-328. *Id.*

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<sup>1</sup>In *Qualls I*, this court dismissed the appeal for lack of subject matter jurisdiction due to the absence of a final judgment.

The Chancery Court found the Commission had failed to include conclusions of law and policy reasons for its decision as required by Tenn. Code Ann. § 4-5-314.<sup>2</sup> The trial court held that it was therefore unable to review the matter in accordance with Tenn. Code Ann. § 4-5-322.<sup>3</sup> It accordingly vacated the Commission's order and remanded the case to the Commission for further proceedings and entry of a final order in compliance with § 4-5-314. *Qualls I*, 2005 WL 2861585, at \*2.

On February 4, 2004, Lt. Qualls filed a motion to alter or amend, requesting that the trial court amend its order to include reasonable attorney's fees pursuant to 42 U.S.C. § 1988. Lt. Qualls' attorney submitted fees of \$14,920 based on a rate of \$400 per hour. In their response to Lt. Qualls' motion, the Commission and Department (hereinafter "Respondents") argued that an award of attorney's fees under 42 U.S.C. § 1988 was not appropriate because Lt. Qualls was not a "prevailing

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<sup>2</sup>Tenn. Code Ann. § 4-5-314(c) provides as follows:

A final order, initial order or decision under § 50-7-304 shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order, initial order or decision must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

<sup>3</sup>Tenn. Code Ann. § 4-5-322 provides in relevant part as follows:

(a)(1) A person who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter, which shall be the only available method of judicial review. . .

(h) The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if the rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (5)(A) Unsupported by evidence that is both substantial and material in the light of the entire record.
- (B) In determining the substantiality of evidence, the court shall take into account whatever in the record fairly detracts from its weight, but the court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.
- (i) No agency decision pursuant to a hearing in a contested case shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.

party,” as required by the statute, where the cause had been remanded for findings. They further asserted that attorney's fees were not warranted under the statute because the trial court had not found a deprivation of rights under color of state law. Respondents also opposed the reasonableness and amount of the requested award. They submitted that the rate of \$400 per hour was unreasonable in that it does not reflect the prevailing market rate for civil rights litigation in Tennessee, and that it was an inappropriate rate for this particular type of case. The trial court found the rate requested to be reasonable and on March 25, 2004, awarded Lt. Qualls attorney's fees of \$14,920 based on an hourly rate of \$400. *Id.*

Upon remand from the Chancery Court, the Commission reversed itself, voting to uphold and affirm the ALJ's original decision. The Commission's decision upon remand produced the final result that Lt. Qualls was reinstated as a correctional lieutenant at Turney Center and granted back pay, and the discipline ultimately imposed upon him was reduced to a three-day suspension. Respondents did not appeal the Commission's decision on remand to the Chancery Court.

## ***II. Issue Presented***

On this appeal, the issue presented is whether the trial court erred in awarding Lt. Qualls his attorney's fee in the amount of \$14,920 based on a rate of \$400 per hour, pursuant to 42 U.S.C. §§ 1993 and 1988.

## ***III. Standard of Review***

The attorney fee provision in 42 U.S.C. § 1988 states that a court “in its discretion, may allow the prevailing party ... a reasonable attorney's fee as part of the costs.” *See Consolidated Waste Systems, LLC v. Metropolitan Gov't of Nashville & Davidson County*, No. M2002-02582-COA-R3-CV, 2005 WL 1541860, at \*45 (Tenn. Ct. App. M.S., June 30, 2005). “As the language of the statute makes clear, the determination of whether to make an award of fees, as well as the amount of such fees, lies within the discretion of the trial court. A trial court's decision to grant or deny fees is reviewed for abuse of discretion. *Fogerty v. MGM Group Holdings Corp.*, 379 F.3d 348, 357 (6th Cir.2004). That discretion is limited, however, by the requirement that only a prevailing party may qualify for a fee award. Additionally, if it is determined that a party meets the prevailing party requirement, fees should be awarded “unless special circumstances would render such an award unjust.” *Hensley v. Eckerhart*, 461 U.S. 424, 429, 103 S.Ct. 1933, 1937 (1983).” *Id.* Generally, “an award of attorney's fees under Section 1998 will be reversed or altered only if the trial court has abused its discretion.” *Sunburst Bank v. Patterson*, 971 S.W.2d 1, 7 (Tenn. Ct. App. 1997).

In *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001), the Tennessee Supreme Court provided the following guidance regarding the abuse of discretion standard:

Under the abuse of discretion standard, a trial court's ruling “will be upheld so long as reasonable minds can disagree as to the propriety of the decision made.” *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000); *State v. Gilliland*, 22 S.W.3d 266, 273 (Tenn. 2000). A trial

court abuses its discretion only when it “applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining.” *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999). The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998).

An abuse of discretion occurs when the lower court's decision is without a basis in law or fact and is, therefore, arbitrary, illogical, or unconscionable. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 191 (Tenn. 2000); *Denver Area Meat Cutters and Employers Pension Plan v. Clayton*, 209 S.W.3d 584, 590 (Tenn. Ct. App. 2006).

#### ***IV. Analysis***

##### ***A. Due Process***

The Respondents argue that the award of fees was improper because the trial court did not make a specific finding that Lt. Qualls’ civil rights had been violated under color of state law. Section 1983 of the United States Code establishes a cause of action against “[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws[.]” Section 1988 of the United States Code provides that a court, in its discretion, may allow the “prevailing party” a reasonable attorney’s fee in an action to enforce an action brought under 42 U.S.C. § 1983. Our courts have held that a claimant may couple a petition for judicial review pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101, *et seq.*, with a claim for attorney’s fees under §§ 1983 and 1988, as Lt. Qualls did here. *Wimley v. Rudolph*, 931 S.W.2d 513, 516 (Tenn. 1996); *Morris v. Correctional Enterprises of Tenn.*, No. 01-A-01-9612-CH00543, 1997 WL 671988, at \*8-9 (Tenn. Ct. App. M.S., Oct. 29, 1997).

It is undisputed that Lt. Qualls, as a non-probationary regular state employee, has a constitutionally protected property right to his employment that cannot be deprived without due process. *See* Tenn. Code Ann. § 8-30-331(a)(providing that “Employees who have successfully completed their probationary period have a ‘property right’ to their positions. Therefore, no suspension, demotion, dismissal or any other action which deprives a regular employee of such employee's ‘property right’ will become effective until minimum due process is provided”); *Armstrong v. Tennessee Dept. of Veterans Affairs*, 959 S.W.2d 595, 598 (Tenn. Ct. App. 1997)(stating “Tennessee law gives certain civil service employees a constitutionally protected property interest in continued employment which cannot be extinguished unless the employees are afforded procedural due process”).

Having determined that Lt. Qualls has a protected property interest in his employment with the state that cannot be deprived without due process, our next inquiry is what process is due him. *Id.*; *Martin v. Sizemore*, 78 S.W.3d 249, 263 (Tenn. Ct. App. 2001). As stated by the *Martin* court,

Because due process is a flexible concept, this inquiry is not amenable to one-size-fits-all answers. The extent and nature of the required procedural due process protections depend on the nature and circumstances of the case...

Procedural due process does not require perfect, error-free governmental decision-making. *Mackey v. Montrym*, 443 U.S. 1, 13, 99 S.Ct. 2612, 2618, 61 L.Ed.2d 321 (1979); *Eye Clinic, P.C. v. Jackson-Madison County Gen. Hosp.*, 986 S.W.2d at 578. It does, however, require affording persons like Mr. Martin a relatively level playing field in a contested case hearing. The state should not be permitted to maintain such an unfair strategic advantage that a pall is cast over the fairness of the proceeding.

*Id.* at 263-64.

Tennessee Code Annotated § 4-5-314 sets forth the requirements that an order of the Civil Service Commission, made pursuant to the Uniform Administrative Procedures Act, must follow:

(a) An agency with statutory authority to decide a contested case shall render a final order.

\* \* \*

(c) A final order...shall include conclusions of law, the policy reasons therefor, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The final order, initial order or decision must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review of the final order.

Notwithstanding these requirements, the order of the Commission in the present case stated as follows in its entirety:

The Civil Service Commission, having completed agency review under the provisions of TCA § 4-5-315, overturns the decision of the Administrative Law Judge with regard to the reinstatement of the grievant's position and assignment held previously.

The Commission orders that the Grievant be demoted from the rank of Lieutenant with the Department of Correction to the rank of Sergeant.

As can be seen, the Commission's order contains no factual findings, legal conclusions, nor policy reasons for its decision. Regarding findings of fact, the parties agreed at the hearing before the Chancery Court that the trial court could treat the factual findings of the ALJ as having been adopted by the Commission, which the trial court did, and thus the ALJ's findings of fact became the trial court's as well. The Respondents admitted that the Commission's final order did not comply with the statutory requirements as stated above, but argued that the error was harmless. However, the trial court held that the absence of statutorily required conclusions of law and policy reasons supporting the Commission's decision rendered meaningful review impossible, and remanded the case to the Commission, stating as follows:

Deference to the harmless error standard, however, is more problematic with respect to the statutorily required conclusions of law and policy reasons supporting the Commission's decision. This is particularly true in this case, where the primary issue is the appropriateness of the discipline imposed. The Court should not be left to guess as to the standards, evidence and policies relied upon – or not relied upon – by the Commission and the reasons the Commission chose to impose the discipline it imposed. The basis of the “harmless error” defense is codified at T.C.A. § 4-5-322(i)<sup>4</sup>; and it cannot be said that the failure of the Commission's Final Order to comply with the statute does not affect the merits of the Commission's decision.

\* \* \*

Simply put, the Commission's failure to include conclusions of law and policy reasons for its decision as required by statute renders the Court incapable of reviewing the decision in accordance with T.C.A. § 4-5-322.

Our Supreme Court, construing the similarly-worded predecessor to Tenn. Code Ann. § 4-5-314, has emphasized the importance of compliance with the statutory requirements, describing them as “not a mere technicality but...an absolute necessity without which judicial review would be impossible.” *Levy v. State Bd. of Examiners*, 553 S.W.2d 909, 911 (Tenn. 1977); *accord CF Industries v. Tennessee Public Service Comm'n*, 599 S.W.2d 536, 541 (Tenn. 1980). Under the applicable statutory scheme, Lt. Qualls' due process rights include the right to *meaningful* review on appeal by the Chancery Court. *See Shaw v. Shelby County Gov't.*, 189 S.W.3d 232, 240 (Tenn.

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<sup>4</sup>Tenn. Code Ann. § 4-5-322(i) provides that “[n]o agency decision pursuant to a hearing in a contested case shall be reversed, remanded or modified by the reviewing court unless for errors that affect the merits of such decision.”

Ct. App. 2005)(stating “the most fundamental element of due process is the opportunity to be heard at a meaningful time and in a meaningful manner”); *Attea v. Eristoff*, No. M2005-02834-COA-R3-CV, 2007 WL 1462206, at \*5 (Tenn. Ct. App. M.S., May 18, 2007)(listing “appellate review of administrative determinations by an independent judicial tribunal” as a “key element of due process”). The trial court was correct in determining that requiring the trial court to review an administrative decision unsupported by statutorily required conclusions of law, any discussion regarding the policy reasons or rationales for the decision, or what evidence was considered in reaching the decision, would effectively deprive the parties of a meaningful review process.

Thus, Lt. Qualls has established a deprivation of his due process rights under color of state law. The trial court awarded Lt. Qualls his attorney’s fee for time expended in pursuing his § 1983 claim, under 42 U.S.C. § 1988, thereby implicitly finding (and remedying, by remand to the Commission) a due process violation. We find no error in the trial court’s decision in this regard, and the fact that the trial court did not explicitly state in its order that it found that Lt. Qualls’ civil rights had been violated under color of state law does not change this conclusion. In so holding, we note that “the Tennessee Supreme Court has even upheld an award of attorney’s fees under 42 U.S.C.A. § 1988 (1991) even though the plaintiff did not specifically plead or rely on 42 U.S.C. § 1983.” *Hardcastle v. Harris*, 170 S.W.3d 67, 91, n.31 (Tenn. Ct. App. 2004), *quoting Bloomingdale’s by Mail v. Huddleston*, 848 S.W.2d 52, 56 (Tenn. 1992); *see also Wimley*, 931 S.W.2d at 514 (upholding Court of Appeals’ decision concluding that “Section 1983 attorneys’ fees may be allowed even though Section 1983 is not invoked, if the facts justify”).

### ***B. “Prevailing Party” Under 42 U.S.C. § 1988***

The Respondents also argue on appeal that Lt. Qualls was not a “prevailing party” such that an award of attorney’s fees was warranted under 42 U.S.C. §§ 1993 and 1998. Recently, this court discussed at length the “prevailing party” concept as interpreted and developed by the United States Supreme Court in the case of *Consolidated Waste Systems, LLC v. Metropolitan Gov’t of Nashville & Davidson County*, No. M2002-02582-COA-R3-CV, 2005 WL 1541860 (Tenn. Ct. App. M.S., June 30, 2005). The *Consolidated Waste Systems* court noted that a plaintiff is a “prevailing party” when actual relief on the merits of his or her claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff, and further stated as follows in relevant part:

The meaning of the term “prevailing party” has been the subject of a number of opinions by the United States Supreme Court. Recently, the Court has indicated that the meaning is relatively clear. In *Buckhannon Board and Care Homes, Inc. v. West Virginia Department of Health and Human Resources*, 532 U.S. 598, 121 S.Ct. 1835 (2001), the Court...made it clear that to be a prevailing party, one must receive at least some judicially-sanctioned relief on the merits of his or her claim. 532 U.S. at 600-604, 121 S.Ct. at 1838-40.

Describing “prevailing party” as a term of art, the Court referred to

the Black's Law Dictionary definition: “[a] party in whose favor a judgment is rendered, regardless of the amount of damages awarded ... Also termed successful party.” A prevailing party is one who has been awarded some relief by the court. 532 U.S. at 603, 121 S.Ct. at 1839.

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This threshold requirement has long existed. “Only where a party has prevailed on the merits of at least some of his claims ... has there been a determination of the ‘substantial rights of the parties,’ which Congress determined was a necessary foundation for departing from the usual rule in this country that each party is to bear the expense of his own attorney.” *Hanrahan v. Hampton*, 446 U.S. 754, 758, 100 S.Ct. 1987 (1980). In *Hensley*, the Court sought to clarify the standard where the plaintiff achieves only limited success. *Hensley*, 461 U.S. [424] at 431, 103 S.Ct. [1933] at 1938. The Court defined a prevailing party as one who succeeded “on any significant issue in litigation which achieves some of the benefit the parties sought in bringing suit.” *Id.*

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“[T]o qualify as a prevailing party, a civil rights plaintiff must obtain at least some relief on the merits of his claim. The plaintiff must obtain an enforceable judgment against the defendant from whom fees are sought, or comparable relief through a consent decree or settlement. Whatever relief the plaintiff secures must directly benefit him at the time of the judgment or settlement.... In short, a plaintiff “prevails” when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.” *Farrar*, 506 U.S. [103] at 111-12, 113 S.Ct. [566] at 573. (citations omitted).

*Consolidated Waste Systems, LLC*, 2005 WL 1541860, at \*46-47; *C.S.C. v. Knox County Bd. Of Educ.*, No. E2006-01155-COA-R3-CV, 2007 WL 1519543, at \*5-6 (Tenn. Ct. App. E.S., May 25, 2007).

In the instant case, Lt. Qualls ultimately obtained significant success on his grievance challenging his discipline as unwarranted and unduly severe. The final order of the Commission, upholding the ALJ's decision, had the effect of setting aside Lt. Qualls' demotion and transfer to another facility, reinstating him to the position and assignment he held at the time of his infraction, and granting him lost back pay. The Respondents state in their brief that “it should be noted that in this case, upon remand, the Commission chose to affirm the ALJ's decision rather than enter a new final order that complied with Tenn. Code Ann. § 4-5-314(c),” but argue that “to the extent Petitioner received the same remedy he would have received had the Chancery Court reversed the decision instead of remanding it, this result does not raise Petitioner to the status of ‘prevailing party’ for

purposes of an award of attorney's fees under 42 U.S.C. § 1988." We disagree; Lt. Qualls clearly is a "prevailing party" in this litigation.

In the case of *Daron v. Department of Correction*, 44 S.W.3d 478 (Tenn. 2001), the Supreme Court was recently presented with a factual situation nearly identical to the present one. In *Daron*, the petitioner was a corrections officer who had been terminated for a violation of DOC policy. *Id.* at 479. He appealed pursuant to the Tennessee Administrative Procedures Act, and the ALJ found that "although Daron had committed several acts of misconduct, the discipline imposed should be a ten-day suspension rather than termination." *Id.* The ALJ denied Mr. Daron's claim for attorney's fees, however, and the Commission affirmed the ALJ's decision. The Chancery Court reversed the Commission's ruling denying attorney's fees, and the issue before the Supreme Court in *Daron* was whether the trial court should have awarded attorney's fees to Mr. Daron as a "successfully appealing employee" under Tenn. Code Ann. § 8-30-328(f).<sup>5</sup> *Id.* at 480.

The Supreme Court held the phrase "successfully appealing employee" analogous to the phrase "prevailing party" under § 1988. The Court further held that Mr. Daron was a successfully appealing employee, and thus vacated the trial court's order refusing to award an attorney's fee, stating:

The purpose of Tenn. Code Ann. § 8-30-328 is to give employees "every opportunity to resolve bona fide complaints or grievances through established procedures." Tenn. Code Ann. § 8-30-328(a)(4). The federal statute [§ 1988] has a similar purpose-to ensure "effective access to the judicial process." H.R.Rep. No. 94-1558, 94th Cong., 2d Sess. 1 (1976). To require litigants to succeed on all aspects of their appeal, as the DOC and the Commission suggest, would not only discourage litigants from pursuing their legitimate claims but would also make attorneys reluctant to represent them.

The DOC and the Commission contend that although the discipline was reduced, Daron is not a "successfully appealing employee" under Tenn. Code Ann. § 8-30-328(f) because he was found guilty of several acts of misconduct. Daron, however, has indeed succeeded on a "significant claim," in that he obtained a reduction in discipline from termination to a ten-day suspension. *See Texas State Teachers Ass'n*, 489 U.S. at 791, 109 S.Ct. at 1493. The finding that he is guilty of misconduct, therefore, is not conclusive as to whether he fits the

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<sup>5</sup>Tenn. Code Ann. § 8-30-328(f) provides in pertinent part: "The commission may, in its discretion, award attorney's fees and costs to a successfully appealing employee." In this case, Lt. Qualls did not include a claim pursuant to this statute, opting instead to proceed solely under 42 U.S.C. §§ 1983 and 1988 for his claim for attorney's fees.

category of a “successfully appealing employee.”

We conclude that the phrases “prevailing party” and “successfully appealing employee” are analogous and hold that a litigant is a “successfully appealing employee” if the employee succeeds on a “significant claim” which affords the employee a substantial measure of the relief sought. Because Daron appealed the DOC's decision to terminate his employment and the discipline was reduced to a ten-day suspension, Daron is a “successfully appealing employee” under Tenn. Code Ann. § 8-30-328(f).

*Daron*, 44 S.W.3d at 481.

The facts of the present case are indistinguishable from those in *Daron*. Similarly to the *Daron* Court’s conclusion, we conclude that the Petitioner, whose discipline was significantly reduced to a three-day suspension, was a prevailing party.

### ***C. Reasonableness of Attorney’s Fee***

Even though Lt. Qualls qualifies as a “prevailing party” under the statute, he may not be entitled to an award of attorney’s fees if such an award would not be reasonable. *Consolidated Waste Systems*, 2005 WL 1541860, at \*49; *C.S.C.*, 2007 WL 1519543, at \*7. “The nature of relief obtained is relevant to the amount of fees awarded and to the exercise of discretion by the trial court in determining that amount. *Farrar*, 506 U.S. at 114, 113 S.Ct. at 574. That is because the court must consider the relationship between the extent of success and the amount of the fee award. *Hensley*, 461 U.S. at 438, 103 S.Ct. at 1942. The degree of overall success is an important, or even the most critical, factor in determining the reasonableness of a fee award. *Id.*; *Texas Teachers Ass’n.*, 489 U.S. at 793, 109 S.Ct. at 1493-94; *Hensley*, 461 U.S. at 436, 103 S.Ct. at 1941.” *Id.*

The trial court approved an award of \$14,920 in fees based on 37.3 hours at a rate of \$400 per hour. In support of his claim for attorney’s fees, Lt. Qualls submitted the affidavit of his attorney, Larry Woods, and the affidavits of two other attorneys that the trial court noted were “long time practitioners in the Nashville community,” all attesting that the fee requested was reasonable under the circumstances. In opposition, the Respondents filed the affidavit of Lucy Honey Haynes, the Associate Chief Deputy Attorney General, who attested that the \$400 per hour rate was unreasonable and excessive.

In its memorandum opinion, the trial court set forth detailed findings regarding the applicable factors provided in Rule 1.5 of the Tennessee Rules of Professional Conduct, which provides guidance to a court in determining whether an attorney’s fee is reasonable. The trial court correctly considered (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the fee customarily charged in the locality for similar legal services; (3) the experience, reputation, and ability of Lt. Qualls’ counsel; and (4)

the amount involved and the results obtained. The trial court found, among other things, that 37.3 hours billed on this matter was a reasonable amount, and that “a lawyer of less skill and ability than Mr. Woods would undoubtedly have spent more time” on the matter. The court further found that the \$400 hourly fee was Mr. Woods’ usual and customary rate, and was within the prevailing market rate for legal services for an attorney of Mr. Woods’ considerable experience and reputation. Finally, the court noted that Mr. Woods obtained significant success for Lt. Qualls in the litigation.

In *Consolidated Waste Systems*, this court noted the trial court’s broad discretion in awarding attorney’s fees, and the reasons for affording that broad discretion, as follows:

A trial court has broad discretion in deciding whether to award fees to a prevailing party and the amount of fees that are reasonable. “It is central to the awarding of fees under § 1988 that the district judge, in his or her good judgment, make the assessment of what is a reasonable fee under the circumstances of the case.” *Blanchard v. Bergeron*, 489 U.S. 87, 96, 109 S.Ct. 939, 946 (1989). The trial court is usually in the best position to make fee award decisions because it has more closely observed and gained a greater understanding of the litigation, the lawyering, and the results. *Hensley*, 461 U.S. at 437, 103 S.Ct. at 1491. “The [trial] court is in the best position to ascribe a reasonable value to the lawyering it has witnessed and the results that lawyering has achieved.” *Wilcox*, 42 F.3d at 555.

2005 WL 1541860, at \*50; accord *C.S.C.*, 2007 WL 1519543, at \*8. We hold that the award of attorney's fees in this case was a reasonable exercise of the trial court's discretion, considering the totality of the litigation and applicable authorities.

### ***V. Conclusion***

For the aforementioned reasons, the judgment of the trial court awarding Lt. Qualls his attorney’s fee in the amount of \$14,920, pursuant to 42 U.S.C. §§ 1983 and 1988, is affirmed. Costs on appeal are assessed to the Appellants, Randy Camp, in his official capacity as Commissioner of Personnel and Executive Secretary of the Civil Service Commission, and Quentin White, in his official capacity as Commissioner of the Tennessee Department of Correction.

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SHARON G. LEE, JUDGE